

SILVERTIP EXPLORATION & MINING

IBLA 79-360

Decided October 10, 1979

Appeal from decision of the Oregon State Office, Bureau of Land Management, declaring 13 mining claims (OR 2742 et al.) null and void ab initio.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

Under 43 CFR 3833.2-1(c), the owner of unpatented mining claims located after Oct. 21, 1976, in the calendar year 1977, must file affidavits of assessment work or notices of intention to hold the mining claims on or before Dec. 30 of the following calendar year, 1978, or the claims will be conclusively deemed to have been abandoned under 43 CFR 3833.4(a).

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

Where a claimant is not required to do any assessment work under the general mining laws, but is nevertheless required to file under 43 CFR 3833.1-2(c), he must file a notice of intention to hold the claims in lieu of an affidavit of assessment work performed.

APPEARANCES: William J. McCarty, Treasurer, Silvertip Exploration & Mining.

## OPINION BY ADMINISTRATIVE JUDGE STUEBING

On September 19 and November 1, 1977, William J. McCarty filed copies of notices of location for 13 mining claims <sup>1/</sup> with the Oregon State Office, Bureau of Land Management (BLM). These claims were located in September and October 1977. Nothing more concerning these claims was filed until March 12, 1979, when McCarty filed a copy of a joint venture agreement between the owners of these claims, under which they created Silvertip Exploration & Mining and quitclaimed their interests in these claims to it.

On April 6, 1979, BLM issued a decision declaring these 13 mining claims void for failure to file assessment statements (proofs of labor) or notices of intent to hold these claims prior to December 31, 1978, as required by section 314(a) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744(a) (1976), and 43 CFR 3833.2-1. Silvertip Exploration & Mining (appellant) filed a timely notice of appeal of this decision. We affirm.

[1] Under section 314(a) of FLPMA, supra, and 43 CFR 3833.2-1(c), <sup>2/</sup> the owner of an unpatented mining claim located after October 21, 1976, is required to file either evidence that he has performed annual assessment work during the previous assessment year or a notice of his intention to hold the claim, on or before December 30 of each calendar year following the calendar year in which the claim was located. Under section 314(c) of FLPMA, supra, and 43 CFR 3833.4, failure to file such instruments as are required by 43 CFR 3833.2 within the time period prescribed therein shall be deemed to constitute an abandonment of the claim and it shall be void. Bruce Parke, 42 IBLA 18 (1979); Charles Caress, 41 IBLA 302 (1979); Blackburn Enterprises, 41 IBLA 115 (1979); Juan Munoz, 39 IBLA 72 (1979); Public Service Co. of Oklahoma, 38 IBLA 193 (1978); John R. Carruthers, 38 IBLA 77 (1978); W. A. Starr, 38 IBLA 74 (1978); Donald H. Little, 37 IBLA 1 (1978); Ronald L. Nordwick, 36 IBLA 238 (1978); Paul S. Coupey, 35 IBLA 112 (1978); see also William L. Rucinski, 42 IBLA 56 (1979); Northwest Citizens for Wilderness Mining Co., Inc., 33 IBLA 317 (1978), aff'd, Northwest Citizens for Wilderness Mining Co., Inc.

---

<sup>1/</sup> See appendix.

<sup>2/</sup> Effective March 16, 1979, Title 43 of the Code of Federal Regulations was amended and this requirement, formerly 43 CFR 3833.2-1(b)(1) was changed slightly and renumbered. The new provision, 43 CFR 3833.2-1(c) provides as follows:

"(c) The owner of an unpatented mining claim located on Federal lands after October 21, 1976, shall, on or before December 30 of each calendar year following the calendar year in which such claim was located, file in the proper BLM office evidence of annual assessment work performed during the previous assessment year or a notice of intention to hold the mining claim."

v. BLM, Civ. No. 78-46-M (D. Mont. June 19, 1979); Southwest Exploration Associates, 33 IBLA 240 (1977).

Appellant's claims were located in the calendar year 1977. Thus, under 43 CFR 3833.3-1(c), appellant was required to file either evidence of assessment work or a notice of intention to hold the claims on or before December 31, 1978, the calendar year following the calendar year in which the claims were located. The record shows, and appellant admits, that it failed to do so. Accordingly, BLM properly declared the claims void.

[2] Appellant argues that the recordation requirements of FLPMA are contrary to the requirements of the Mining Act of 1872 regarding annual assessment work, in that FLPMA allegedly requires assessment work to be done in the same assessment year in which the claims are located. This is not true. The statute concerning performance of assessment work still applies: the period within which to do the required annual work "shall commence at 12 p.m. meridian on September 1 succeeding the date of location of such claim." 30 U.S.C. § 28 (1976); Donald H. Little, *supra* at n.1. Appellant's claims were located in September and October 1977, so that its assessment year began on September 1, 1978. Thus, appellant had until August 31, 1979, the end of this assessment year, to do its first assessment work, so that no assessment work was required in calendar year 1978.

Nevertheless, appellant was required to comply with the recordation requirements of FLPMA. That is, on or before December 30, 1978, it was required to file with BLM evidence of any assessment work which it actually did in the previous year, if any. Alternatively, if appellant chose to wait until 1979 to do any assessment work (which it could legally do, as discussed above), it was required in the alternative to file a notice of its intention to hold the claim. Donald H. Little, *supra* at 3; see Juan Munoz, *supra* at 73.

We reject appellant's argument that 43 CFR 3833.4(b) excuses its failure to file. This section concerns the situation where a claimant does file the information as required by FLPMA, but does so in a manner which is defective or untimely under other laws governing filing. In these circumstances, this section provides that the filing may not be deemed invalid because of its failure to meet the requirements of the other laws, if it is proper under FLPMA. Such is not the situation here.

Appellant states that rather than await the outcome of this appeal it relocated the claims on April 14, 1979, and recorded the new locations with BLM, at a cost to the company of \$110, and it requests a refund in this amount. <sup>3/</sup> Ordinarily, we would advise appellant to make application for repayment pursuant to 43 CFR 1822. However, in

---

<sup>3/</sup> The cost of the fees for recording with BLM was only \$65 for the 13 claims. Presumably appellant is asking an additional \$45 as damages for other costs incurred.

view of our holding that BLM's decision in this case was correct, we observe that no refund is payable in these circumstances.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

---

Edward W. Stuebing  
Administrative Judge

We concur:

---

Newton Frishberg  
Chief Administrative Judge

---

James L. Burski  
Administrative Judge

## APPENDIX

<u>Name of Claim</u>	<u>Date of Location</u>	<u>Serial Number</u>
R. Danseau	September 4, 1979	OR MC 3143 (Wash)
Bonita	September 4, 1979	OR MC 2743 (Wash)
Teri Marie	September 10, 1977	OR MC 2744 (Wash)
Moon-shadow	September 10, 1977	OR MC 2745 (Wash)
Cheryl Lee	September 19, 1977	OR MC 2746 (Wash)
W. Danseau	September 4, 1977	OR MC 2747 (Wash)
Tri Eagle No. 1	October 8, 1977	OR MC 3143 (Wash)
Tri Eagle No. 2	October 8, 1977	OR MC 3144 (Wash)
Tri Eagle No. 3	October 8, 1977	OR MC 3145 (Wash)
Tri Eagle No. 4	October 8, 1977	OR MC 3146 (Wash)
Big Bertie Bonanza	October 22, 1977	OR MC 3147 (Wash)
Kay's Pride	October 22, 1977	OR MC 3148 (Wash)
Sue Kay	October 22, 1977	OR MC 3149 (Wash)

